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Brian Pinaire

Milton Heumann

Laura Bilotta

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BARRED FROM THE VOTE: PUBLIC ATTITUDES TOWARD THE DISENFRANCHISEMENT OF FELONS

*Brian Pinaire**
*Milton Heumann***
*Laura Bilotta****

In the United States, except for slaves, servants, and paupers fed by the township, no one is without a vote and, hence, an indirect share in lawmaking.¹

—Alexis de Tocqueville

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.²

—*Reynolds v. Sims*

INTRODUCTION

If ex-felons had been able to vote in Florida during the presidential election of 2000, several scholars and commentators tell us, Al Gore would have defeated George W. Bush by between 10,000 and 85,000 votes.³ According to the best available estimates, Florida's

* Assistant Professor, Department of Political Science, Lehigh University; B.A., Whitman College, 1997; Ph.D., Rutgers University, 2003.

** Professor and Chair, Department of Political Science, Rutgers University; B.A., Brooklyn College, 1968; M.Phil., Yale University, 1970; Ph.D., Yale University, 1974.

*** J.D. candidate, New York University School of Law, 2005; B.A., Rutgers University, 2002.

1. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 240 (J.P. Mayer ed., George Lawrence trans., Harper Perennial 1988) (1966).

2. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

3. Nicholas Thompson, *Locking up the Vote*, WASH. MONTHLY, Jan.-Feb. 2001, at 17, 21. Most recently, Sasha Abramsky, a media fellow at the Open Society Institute's Center on Crime, Communities, and Culture, has offered the conservative estimate that if Gore had earned 60% of the vote from those who had been denied the vote, he would have won the state of Florida and, thus, the presidential election. Sasha Abramsky, *A Growing Gap in American Democracy*, N.Y. TIMES, July 27, 2002, at A23. Further, in a more comprehensive study, sociologists Jeff Manza and Christopher Uggen project that turnout by felons would be close to one-third in presidential elections, and they predict that between 70 and 90% of former or current felons would vote Democratic. CHRISTOPHER UGGEN & JEFF MANZA, *THE POLITICAL CONSEQUENCES OF FELONY DISFRANCHISEMENT LAWS IN THE UNITED STATES* 15 (2001),

law, which for all practical purposes bars all ex-felons from ever voting again,⁴ kept over 525,000 people, 5% of the state's voting age population, away from the polls during this last presidential election.⁵ Nationally, according to the scholars at The Sentencing Project,⁶ an estimated 3.9 million U.S. citizens (one in fifty adults) are disenfranchised, including over one million who have fully completed their sentences.⁷ Perhaps most startling, 13% of African-American men in the United States (1.4 million) are disenfranchised, representing over 36% of the total disenfranchised population.⁸

This Essay explores a surprisingly understudied issue: public attitudes toward the disenfranchisement of felons. While forty-eight

available at <http://www.northwestern.edu/ipr/publications/papers/2000/disfranchise.pdf> (last visited July 15, 2003). The impact of these policies on past and present elections is, therefore, quite significant. See Audrey Chambers, *Vote of Felons, Ex-Felons Would Have Changed Election Outcomes*, 22 INST. POL'Y RES. NEWS, NW. UNIV., Spring 2001, at 3, available at <http://www.northwestern.edu/IPR/publications/newsletter/iprn0106/felons.html> (last visited July 15, 2003).

For example, these scholars suggest that if as many individuals were incarcerated and disenfranchised in 1960 as are today, John F. Kennedy would have lost the presidential election to Richard M. Nixon. Additionally, Uggen and Manza argue, seven Senate elections between 1970 and 1998 would have been overturned, and the Democrats would have controlled the Senate throughout the 1990s. UGGEN & MANZA, *supra*, at 16, 19, 24; Chambers, *supra*, at 1. But, while the repeal of disenfranchisement laws would clearly benefit the Democrats, even the neoconservative social theorist James Q. Wilson concludes that a "perpetual loss of the right to vote serves no practical or philosophical purpose." Thompson, *supra*, at 21.

4. FLA. STAT. ANN. § 97.052 (West 2002). While every state has some process in place for restoring the right to vote, the process is generally so convoluted and complicated that it is rarely carried out.

5. Julie Kay & Michael D. Goldhaber, *Florida Has More Nonvoting Ex-Felons Than Any Other State So Expect A Battle*, PALM BEACH DAILY BUS. REV., Dec. 1, 2000, at B1.

6. "The Sentencing Project is a non-profit organization which promotes decreased reliance on incarceration and increased use of more effective and humane alternatives. It is a nationally known source of criminal justice policy analysis, data and program information." The Sentencing Project, at <http://www.sentencingproject.org/about/about.html> (last visited July 15, 2003).

7. PATRICIA ALLARD & MARC MAUER, REGAINING THE VOTE: AN ASSESSMENT OF ACTIVITY RELATING TO FELON DISENFRANCHISEMENT LAWS 2 (2000), available at <http://www.sentencingproject.org/pubs/regainvote.pdf> (last visited July 15, 2003); THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (FACT SHEET) 1 (2002), available at <http://www.sentencingproject.org/brief/pub1046.pdf> (last visited July 15, 2003); see JAMIE FELLNER & MARC MAUER, THE SENTENCING PROJECT, LOSING THE VOTE: THE IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1 (1998), available at <http://www.hrw.org/reports98/vote/> (last visited July 15, 2003).

8. ALLARD & MAUER, *supra* note 7, at 2; THE SENTENCING PROJECT, *supra* note 7, at 1; see FELLNER & MAUER, *supra* note 7, at 1.

states restrict (or revoke entirely) the right of felons to vote,⁹ there is remarkably little social scientific discussion of the rationale, effects, and public understanding or acceptance of felony disenfranchisement. Law review articles discuss justifications and legal strategy,¹⁰ and some social scientists have begun to assess the impact of these laws nationwide.¹¹ Our survey data represent the first comprehensive assessment of public support for laws and practices of this sort.

Curiosity caused us to embark upon this project. While our preliminary research involved a review of state laws and legislative histories, we then assessed the public's understanding of, and support for, these practices. Do Americans even know about these laws? Do the laws "speak" for the people in this sense? And, perhaps most importantly, can we identify the reasoning that upholds these public attitudes?

Americans, we assumed, generally value "justice" and "rights" and expect the legal system to protect both. Yet, there is, in America, also a commitment to notions of personal responsibility and citizenship;¹² implying that rights compel duties, and those who violate the rules of the social order are punished accordingly.¹³ Thus, we believed that most would accept the idea that those who "do the crime" should "do the time." But, we wondered, what happens when the "time" is up? Would support remain for continuing to punish those who served their sentences and were returned to society as free citizens?

We begin with an overview of various state laws, the significant legal and political issues they implicate, and the impact of these practices. We then move to a discussion of our primary research questions, theory, and methods, and subsequently to a discussion of our findings. Finally, we explore the policy implications of this research and propose directions for future study.

I. OVERVIEW: LAWS, ISSUES, AND IMPACT

Currently, forty-eight states and the District of Columbia disenfranchise convicted felons during some phase of the criminal justice

9. Vermont and Maine do not restrict the rights of felons to vote. UGGEN & MANZA, *supra* note 3, at 4 n.2.

10. See, e.g., *Developments in the Law—The Law of Prisons: One Person, No Vote: The Laws of Felon Disenfranchisement*, 115 HARV. L. REV. 1939, 1957-58 (2002).

11. See UGGEN & MANZA, *supra* note 3, at 2.

12. Edith Jones, *The Nature of Man According to the Supreme Court*, 4 TEX. REV. L. & POL. 237, 242-43 (1999).

13. *Id.*

process.¹⁴ Thirty-two of these states prohibit felons from voting while they are on parole and twenty-eight exclude felony probationers as well.¹⁵ Perhaps most significant, thirteen states *permanently* disenfranchise some or all ex-felons.¹⁶ Eight states permanently and categorically revoke the right to vote for *all* offenders, even those who have completed all aspects of their sentences, four other states permanently disenfranchise *some* ex-offenders,¹⁷ and one state withholds the franchise right from some ex-felons for a period of five years upon completion of their sentence.¹⁸

TABLE 1 STATE FELONY DISENFRANCHISEMENT LAWS ¹⁹				
State	Prison	Probation	Parole	Ex-Felons
Alabama	•	•	•	•
Alaska	•	•	•	
Arizona	•	•	•	• ²⁰
Arkansas	•	•	•	
California	•		•	
Colorado	•		•	
Connecticut	•		•	
Delaware	•	•	•	• ²¹
District of Columbia	•			
Florida	•	•	•	•
Georgia	•	•	•	
Hawaii	•			
Idaho	•			
Illinois	•			
Indiana	•			
Iowa	•	•	•	•
Kansas	•			
Kentucky	•	•	•	•
Louisiana	•			
Maine				

14. THE SENTENCING PROJECT, *supra* note 7, at 1.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Table 1 is adapted from THE SENTENCING PROJECT, *supra* note 7, at 3.

20. Applies only after the second felony conviction.

21. In 2000, the General Assembly restored the voting rights of certain ex-felons five years after the completion of their sentence. DEL. CONST. art. V, § 2; see ALLARD & MAUER, *supra* note 7, at 6.

Maryland	•	•	•	• ²²
Massachusetts	•			
Michigan	•			
Minnesota	•	•	•	
Mississippi	•	•	•	•
Missouri	•	•	•	
Montana	•			
Nebraska	•	•	•	
Nevada	•	•	•	•
New Hampshire	•			
New Jersey	•	•	•	
New Mexico	•	•	•	
New York	•		•	
North Carolina	•	•	•	
North Dakota	•			
Ohio	•			
Oklahoma	•	•	•	
Oregon	•			
Pennsylvania	•			
Rhode Island	•	•	•	
South Carolina	•	•	•	
South Dakota	•			
Tennessee	•	•	•	• ²³
Texas	•	•	•	
Utah	•			
Vermont				
Virginia	•	•	•	•
Washington	•	•	•	• ²⁴
West Virginia	•	•	•	
Wisconsin	•	•	•	
Wyoming	•	•	•	•
U.S. Total	49	28	32	13

22. Recently, Maryland repealed its voting ban for two-time ex-felons (except for those with two violent felony convictions), and imposed a three-year waiting period upon completion of the sentence before the right to vote is restored to felons. THE SENTENCING PROJECT, *supra* note 7, at 2.

23. Applies only to felonies committed prior to 1986.

24. Applies only to felonies committed prior to 1984.

While each state has developed a system for restoring voting rights to ex-offenders, the restoration process is usually so complicated and cumbersome that it is rarely utilized.²⁵

The tradition of denying criminals the right to vote, a practice with roots in the Greek and Roman eras,²⁶ is a vestige of the medieval practice of "civil death," wherein offenders were banished from the political community.²⁷ The laws disenfranchising convicted felons that were in place after the revolutionary war in many states²⁸ took on a new and more pernicious significance after the passage of the Fifteenth Amendment to the U.S. Constitution, an amendment that gave African-American males the right to vote.²⁹ The right to vote has been withheld from many citizens throughout the history of this nation; women,³⁰ the illiterate,³¹ and the property-less³² were denied suffrage along with African-Americans.³³ In the era following Reconstruction, southern opposition and re-

25. The United States Department of Justice has referred to this phenomenon as "a national crazy-quilt of disqualifications and restoration procedures." See OFFICE OF THE PARDON ATTORNEY, U.S. DEP'T OF JUSTICE, CIVIL DISABILITIES OF CONVICTED FELONS: A STATE-BY-STATE SURVEY ii (1996).

Alabama, for example, requires that ex-offenders provide a DNA sample to the Alabama Department of Forensic Services as one part of the process of regaining the vote. ALLARD & MAUER, *supra* note 7, at 5. In Florida, clemency is granted only if the governor and three of his cabinet members consent. Additionally, Florida's sixteen-page application asks for information such as the date of birth of all persons with whom the applicant may have had a child out of wedlock, the cause of death of the applicant's parents, and the name and purpose of any organizations to which the applicant belongs. Nicholas Thompson, *Locking up the Vote*, WASH. MONTHLY, Jan. 1, 2001, at 17.

At the federal level, Representative John Conyers and thirty-seven co-sponsors have introduced the Civic Participation and Rehabilitation Act, which seeks to restore federal voting rights to persons who have been released from incarceration, even if they are prohibited from participating in state elections. Civic Participation and Rehabilitation Act, H.R. 906, 106th Cong. § 3 (1999).

26. Note, *The Disenfranchisement of Ex-felons: Citizenship, Criminality, and the "Purity of the Ballot Box,"* 102 HARV. L. REV. 1300, 1301 (1989).

27. See FELLNER & MAUER, *supra* note 7, at 1; Note, *Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy*, 103 YALE L.J. 537, 562 (1993); Alec Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Laws in the United States*, 2002 WIS. L. REV. 1045, 1045.

28. *To Secure the Federal Voting Rights of Persons Who Have Been Released from Incarceration: Hearing on H.R. 906 Before the House Comm. on the Judiciary*, 106th Cong. 4 (1999) (testimony of Todd F. Gaziano, Senior Fellow in Legal Studies, The Heritage Foundation).

29. U.S. CONST. amend. XV.

30. DANIEL HAYS LOWENSTEIN & RICHARD C. HASEN, *ELECTION LAW* 26 (2d ed. 2001).

31. *Id.* at 31.

32. *Id.* at 26-27.

33. *Id.* at 28.

sentment led to the creation of numerous voting barriers, aimed specifically at African-Americans.³⁴

Poll taxes,³⁵ grandfather clauses,³⁶ and property tests³⁷ were common (and ostensibly race-neutral); but, many southern states instituted new forms of "Jim Crow" legislation meant to target African-Americans in particular, with the intention of disqualifying them from the vote.³⁸ The racial impact of these laws, especially in the south, is staggering. Ten states disenfranchise more than one in five adult African-American men,³⁹ while in seven of those states, one in four African-American men is *permanently* disenfranchised.⁴⁰ Furthermore, in two states, Alabama and Florida, 31% of all African-American men are *permanently* disenfranchised.⁴¹

There are two basic theoretical justifications offered by courts and commentators for the disenfranchisement of felons. One is that the commission of a felony constitutes a violation of the "social contract."⁴² The other is that such an offense demonstrates an inability to abide by the moral requirements of civic republicanism.⁴³ According to traditional social contract rationale, freely

34. *Id.* at 28-32.

35. *Id.* at 31.

36. *Id.*

37. *Id.* at 26-27.

38. Disenfranchisement laws were tailored to include crimes that African-Americans were allegedly more likely to commit. It was the case in South Carolina, as but one example, that "the disqualifying crimes were those to which [the Negro] was especially prone: thievery, adultery, arson, wife-beating, housebreaking, and attempted rape. Such crimes as murder and fighting, to which the white man was as disposed as the Negro, were significantly omitted from the list." FELLNER & MAUER, *supra* note 7, at 2.

The 1890 constitutional convention of the state of Mississippi replaced an 1869 provision disenfranchising felons convicted of "any crime" with more specific language that emphasized crimes that African-Americans were estimated to be more likely to commit (i.e., bribery, bigamy, theft). The racist intentions of these "adjustments" could not have been expressed any clearer than by John Fielding Burns, author of the Alabama constitutional provision disenfranchising particular criminals, who "estimated the crime of wife-beating alone would disqualify sixty-percent of the Negroes." Andrew Shapiro, *Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy*, 103 YALE L.J. 1, 1-25 (1993).

39. FELLNER & MAUER, *supra* note 7, at 2.

40. THE SENTENCING PROJECT, *supra* note 7, at 1 (citing FELLNER & MAUER, *supra* note 7, at 2).

41. FELLNER & MAUER, *supra* note 7, at 2, 8.

42. *See id.*

43. Ewald, *supra* note 27, at 1048. In his discussion of the relationship between these traditions and felony disenfranchisement laws, Ewald presents a helpful, theoretically rich argument that simultaneously finds support and tension within the American political tradition regarding the justifications proposed for permanent dis-

choosing individuals begin from an original bargaining position and design a system of neutral arrangements that will protect and promote their basic rights and interests. Central to this reasoning is the idea that all people have basic needs and that they form a community and institute rules of governance in order to provide security and a structure that will allow them to enjoy their liberty.⁴⁴ A violation of the terms of the "contract" disrupts the balance of rights and responsibilities, invites a punitive response according to pre-determined rules, and essentially (at least temporarily) strips the individual of her right to participate in the political process.⁴⁵

The civic republican rationale for disenfranchisement is animated by a concern for the moral character of the political community and specifically the virtue of its members.⁴⁶ A polis, in other words, is only as well-ordered as the moral compass directing its citizen-components.⁴⁷ Thus, rather than emphasizing the choice inherent in the liberal, contractarian model above, civic republicanism embraces the political fitness, quality and essence of its members, and therefore, their capacity to conceive of and act toward the common good.⁴⁸ As a result, it is not so much that a violation

enfranchisement. More specifically, Ewald borrows the idea of "multiple traditions" from Rogers Smith. ROGERS SMITH, *CIVIC IDEALS* 35-39 (1997). Smith proposed that "American political actors have always promoted civic ideologies that blend liberal, democratic, republican, and egalitarian ascriptive elements in various combinations designed to be politically popular," and argues that a combination of liberal (contract-oriented), civic republican (virtue-oriented), and racially discriminatory ideologies has sustained this kind of legislation, even while principles within liberalism (of the modern kind) and republicanism seem to be at odds with such practices. *Id.*

44. THOMAS HOBBS, *LEVIATHAN* 117-29 (Richard Tuck ed., Cambridge Univ. Press 1996) (1660); JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 269-78 (Peter Laslett ed., Cambridge Univ. Press 1998) (1690); MICHAEL SANDEL, *DEMOCRACY'S DISCONTENT* 1-54 (1996); Ewald, *supra* note 27, at 1073.

Chapters 17 and 18 of Thomas Hobbes' *Leviathan* first expressed a vision of this kind of contract arrangement, though John Locke's emphasis on liberty and property (as opposed to merely security, for example), best represents the American application of "contract" reasoning. See, specifically, Locke's discussion of "the state of Nature" in Chapter 2 of his "Second Treatise on Government." LOCKE, *supra*, at 287-96.

45. Expressing social contract reasoning of this sort, Judge Henry Friendly of the United States Court of Appeals for the Second Circuit explained "[a] man who breaks the laws he has authorized his agent to make for his own governance could fairly have been thought to have abandoned the right to participate in further administering the compact." *Green v. Bd. of Elections*, 380 F.2d 445, 451 (2d Cir. 1967).

46. See, e.g., FELLNER & MAUER, *supra* note 7, at 1.

47. *Id.*

48. See, e.g., ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 167-218 (1985); SANDEL, *supra* note 44, at 1-54; Cass Sunstein, *Beyond the Republican Revival*, 97 *YALE L.J.* 1539, 1547-58 (1988). *Washington v. State*, a commonly-cited case, articulates the civic republican vision and the rationale for disenfranchising felons:

earns you time in the proverbial “penalty box,” but rather that you no longer exude the qualities of a good and right “team player,” and thus no longer deserve a spot on the roster.

In two significant voting rights cases within the last three decades, the United States Supreme Court considered these different strands of reasoning as it upheld the constitutionality of laws that disenfranchise convicted felons.⁴⁹ While the Court has called the right to vote “fundamental,”⁵⁰ making it clear that “no right is more precious in a free country,”⁵¹ and while it has famously asserted that the “right to vote freely for the candidate of one’s choice is the essence of a democratic society,”⁵² the Supreme Court has failed to extend this guarantee to convicted felons.

In the first major challenge of felony disenfranchisement laws to reach the Court, *Richardson v. Ramirez*,⁵³ Justice Rehnquist, later Chief Justice, authored a majority opinion that upheld a California law denying ex-felons the right to vote.⁵⁴ For the majority, Section

The manifest purpose [of denying suffrage to ex-convicts] is to preserve the purity of the ballot box, which is the only sure foundation of republican liberty, and which needs protection against the invasion of corruption, just as much as against that of ignorance, incapacity, or tyranny. The evil infection of the one is not more fatal than that of the other. The presumption is, that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship.

Washington v. State, 75 Ala. 582, 585 (1884). The classic example portraying this manner of political exclusion, as a means of preventing corruption and preserving the moral vigor of a community, can be found in the trial of Socrates. PLATO, *THE TRIAL AND DEATH OF SOCRATES* (Shane Weller ed., B. Jowett trans., Dover Publ’ns, Inc. 1992).

49. In his discussion of the institutional and historical development of American citizenship laws, Rogers Smith offers an interesting discussion of what appears to be the earliest African-American voting rights case to reach the United States Supreme Court, *Williams v. Mississippi*, 170 U.S. 213 (1898). Specifically, Smith notes that, while Mississippi’s registration requirements were, according to the State Supreme Court, “aimed at exploiting various ‘weaknesses’ of blacks, they were constitutional [for the U.S. Supreme Court] because ‘on their face,’ at least, they applied to ‘weak and vicious white men as well.’” SMITH, *supra* note 43, at 451.

50. *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966).

51. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

52. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

53. 418 U.S. 24 (1974).

54. *See id.* at 54-56. *Ramirez* involved three California ex-felons who were incarcerated and had completed their parole. *Id.* at 26. The California Supreme Court had reversed the decision of election officials who refused to let the ex-felons register to vote and held that the state’s disenfranchising law violated the Equal Protection clause of the United States Constitution. *Id.* at 27. The United States Supreme Court reversed the California court, finding that the law did not, on its face, violate the Equal Protection Clause of the Fourteenth Amendment, and remanded the case to

1 of the Fourteenth Amendment, which prohibits states from denying persons equal protection of the laws, must be read in light of Section 2 of the amendment, which implies that states have the capacity to disenfranchise those who participate in "rebellion, or other crime."⁵⁵ Read this way, the traditional "strict scrutiny" standard of Section 1 "could not have been meant to bar outright a form of disenfranchisement"⁵⁶ which "has an affirmative sanction in § 2."⁵⁷

In his dissent, Justice Marshall was quick to realize the potential for extreme abuses of discretion if the phrase "other crimes" was to be so loosely interpreted.⁵⁸ "Absurd results" could follow, according to Justice Marshall, if the states were granted the authority to give meaning to such an open-ended concept, legitimating disenfranchisement for seduction under promise to marry, conspiracy to operate a motor vehicle without a muffler, vagrancy, breaking a water pipe, or even jaywalking or a traffic conviction, "since § 2 does not differentiate between felonies and misdemeanors."⁵⁹

Eleven years later, however, in an Alabama case, the Supreme Court took the opportunity to put an important limitation on the "other crime" doctrine established in *Ramirez*. In *Hunter v. Underwood*,⁶⁰ the Court unanimously declared that "§ 2 was not de-

the California courts to consider whether the law was applied with "such a total lack of uniformity" that it violated the Equal Protection Clause." *Id.* at 56.

55. *Id.* at 42. Before *Ramirez*, the Supreme Court had summarily affirmed lower court decisions rejecting constitutional challenges to state laws disenfranchising convicted felons. See, e.g., *Fincher v. Scott*, 411 U.S. 961 (1973); *Beacham v. Braterman*, 396 U.S. 12 (1969). The relevant part of Section 2 of the Fourteenth Amendment of the United States Constitution reads:

[W]hen the right to vote . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

U.S. CONST. amend. XIV, § 2 (emphasis added).

56. *Ramirez*, 418 U.S. at 55.

57. *Id.* at 54.

58. *Id.* at 73-86 (Marshall, J., dissenting).

59. *Id.* at 75 n.24 (Marshall, J., dissenting). Some states actually do disenfranchise citizens who commit these offenses. For example, Alabama disenfranchises offenders convicted of vagrancy and North Dakota disenfranchises offenders convicted of breaking a water pipe. Gary Reback, *Disenfranchisement of Ex-Felons: A Reassessment*, 25 STAN. L. REV. 845, 846 (1973). In *Otsuka v. Hite*, the Supreme Court of California noted that California could disenfranchise offenders convicted of seduction under promise of marriage or conspiracy to operate a motor vehicle without a muffler. 414 P.2d 412, 418 (Cal. 1966).

60. 471 U.S. 222 (1985).

signed to permit the purposeful racial discrimination . . . which otherwise violates § 1 of the Fourteenth Amendment.”⁶¹ This case involved two plaintiffs, one African-American and one white, who had been prohibited from voting because each had been convicted of passing bad checks, a misdemeanor of “moral turpitude” according to the Alabama Attorney General.⁶² In federal court, the plaintiffs asserted that section 182 of the Alabama Constitution violated the Equal Protection Clause because it was adopted with intent to discriminate against African-Americans and was, in fact, fulfilling its intended effect.⁶³ The Supreme Court agreed, in another opinion by Chief Justice Rehnquist, finding substantial evidence of discriminatory intent and impact and furthermore concluding that the provision would not have been adopted absent the impermissible intent.⁶⁴ Importantly, therefore, in this case, the Court explained that while felony disenfranchisement laws were not unconstitutional on their face, they could be unconstitutional *as applied*, if it could be proven that racial discrimination was a “substantial” or “motivating” factor behind the enactment of a challenged law.⁶⁵

II. RESEARCH DESIGN

A. Overview

As an exploratory research project, this Study generates more hypotheses than it tests. We began with a few basic questions and expectations that were based on previous studies of public opinion regarding controversial civil liberties issues,⁶⁶ with the hope of providing a foundation for future scholarship on this issue.⁶⁷ Our data,

61. *Id.* at 224.

62. *Id.*

63. *Id.* at 227.

64. *Id.* at 230-31. As the *Official Proceedings of the Constitutional Convention of the State of Alabama* (1901) indicate, one delegate involved in the adoption of the disputed section at the 1901 convention claimed “[e]verybody knows that this Convention has done its best to disenfranchise the Negro in Alabama.” Andrew L. Shapiro, *Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy*, 103 *YALE L.J.* 537, 548 (1993).

65. *Hunter*, 471 U.S. at 228.

66. James W. Prothro & Charles M. Grigg, *Fundamental Principles of Democracy: Bases of Agreement and Disagreement*, 22 *J. POL.* 276, 282-91 (1960).

67. Because this Study focuses on controversial political questions as well—measuring public attitudes regarding a specific right at the heart of our democracy, while situating this inquiry within a more global investigation of the peoples’ views on various issues—the summary of findings offered by Prothro and Grigg are especially intriguing: “As expected, general consensus was found on the idea of democracy itself

we believe, raise questions about the justness and public support for existing practices, while enriching our understanding of the public's views of the criminal justice system and introducing a new set of concerns, questions, and complications for policymakers and scholars in several fields.

Legitimate concerns might be raised, and state interests could be rationalized, for the *temporary* disenfranchisement of felons, during some stage of the process. But, in a nation that professes faith in the democratic process, can the *permanent* disenfranchisement of felons be justified? Does the public support such practices? If so, based on what reasoning? That is, if most Americans feel that justice has been served when the sentence is completed (if you "do the crime," you "do the time") then why is it that more than one-fourth of American states (thirteen)⁶⁸ maintain legislation that disenfranchises some or all ex-felons for life?⁶⁹ If we trust offenders enough to release them back into society, can we justify not returning to them the full rights and privileges of political citizenship?

But, if the public does in fact support lifetime disenfranchisement, does this suggest that the "debt" has *not* been paid once the time is served? Does it suggest that "the system" is too "soft" on crime? Does it suggest that Americans hold dear to some notion of the social contract, or civic republicanism, and thus believe that ex-felons have, by their actions, demonstrated that they are not good citizens or cannot be trusted? Alternatively, if the public does not support these laws, or the basic notion of disenfranchisement (temporary or permanent), what does this tell us about the staying power of this kind of legislation? That is, if there is not public support for these practices, should the draconian denial of vote provisions remain "on the books?"

B. Theory

We began this research expecting conclusions similar to those drawn by Prothro and Grigg in their seminal study of public support for the protection of civil liberties, generally, and the preser-

and on the broad principles of majority rule and minority rights, but it disappeared when these principles were put in more specific form." *Id.* at 291.

68. The thirteen states are: Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Maryland, Mississippi, Nevada, Tennessee, Virginia, Washington, and Wyoming. See Tbl. 1.

69. George P. Fletcher, *Disenfranchisement as Punishment: Reflections on the Racial Uses of Infamia*, 46 UCLA L. REV. 1895, 1898 (1999) (stating that felons are barred from voting for life).

vation of the freedoms of particular individuals and groups, specifically.⁷⁰ That is, in light of American political values, tradition, culture, and lore, we expected most Americans to support the basic idea of rights, liberties, and justice. As a social contract society that prides itself on the rule of law, this is a logical assumption to make: the state is created to preserve basic freedoms and to provide order, security, and stability.

We also expected, however, to see this support wane when considering the particular sub-category of convicted felons. With rights come responsibilities, as we imagined the equation playing out in the minds of the public, and thus, a violation of the law is a renunciation of one of the essential terms of citizenship. Shirking responsibility by committing a felony could, under this reasoning, justify a temporary or permanent restriction of rights (even the most “fundamental” ones) either for punitive purposes, or simply because the individual has demonstrated that she cannot be trusted with such important civic duties.

C. Hypothesis

We expected the “right to vote” to be perceived as one of the most important rights in a democracy, but we expected public support for this right to diminish when convicted felons were considered. The public would accept the concept of disenfranchisement, we hypothesized, and would justify the practice with a mixture of both social contract and republican reasoning. We also assumed public support for disenfranchisement laws, given that forty-eight states either temporarily or permanently remove the right to vote. This notion is predicated on the assumption that there is a correlation between laws and positive public attitudes, in the sense that the people’s representatives represent the people’s views.⁷¹ In short, felony disenfranchisement laws should be widespread because of widespread public support for them.

D. Methodology

We used survey research methods to measure public attitudes toward the disenfranchisement of felons. Our survey asked a vari-

70. Prothro & Grigg, *supra* note 66, at 276.

71. We realized that this is at least a contested notion of “representation.” For the sake of argument, however, we adhered to this model and felt that, especially given the close “electoral connection” that exists between the people and their elected “voices” where issues of crime and criminal justice are concerned, in particular, it was at least plausible to envision this kind of delegate relationship.

ety of questions, ranging from basic beliefs about the purpose of the criminal justice system (i.e., punishment, rehabilitation, deterrence), to public attitudes about the treatment and punishment of felons (i.e., the amount of rights protected, degree of punishment conferred/time served, fairness of the system), to public support for the disenfranchisement of felons, including the rationale for such laws. (See Figure 1 below). Again, our intent was to gauge general attitudes about the criminal justice system, the rights accorded to felons, and public support for laws that restrict or remove the right to vote, including the reasoning that is used to either accept or reject these practices.

These questions were included in a national survey of 503 people conducted by the Center for Survey Research and Analysis at the University of Connecticut.⁷² Interviews were conducted by telephone, between May 16 and June 6, 2001, using a Computer Assisted Telephone Interviewing ("CATI") system. Professional survey interviewers, trained in standard protocols for administering survey instruments, conducted the surveys.

The national sample used for this research project included residential telephone numbers in the forty-eight contiguous states. The sample was stratified to insure that broad geographic regions were represented in proportion to their share of the total adult population in the United States. Within each of these regions, telephone numbers were generated through a random-digit-dial telephone methodology to insure that each possible residential telephone number had an equal probability of selection. Telephone banks that contain no known residential telephone numbers were removed from the sample selection process. Once selected, each telephone number was contacted a minimum of four times to attempt to reach an eligible respondent. Households where a viable contact was made were called additional times. Within each household one adult was randomly selected to complete the interview.⁷³

72. Center for Survey Research & Analysis at the University of Connecticut, at <http://www.csra.stamford.uconn.edu/research.html> (last visited July 15, 2003).

73. This methodology was adapted from the explanation of methodology distributed by the Center for Survey Research and Analysis at the University of Connecticut. Our questions were one component of a larger survey project looking at general public attitudes toward the First Amendment.

FIGURE 1
SURVEY QUESTIONS

-
1. In your opinion, is the right to vote:
 - A. THE most important right in a democracy;
 - B. One of the most important rights in a democracy;
 - C. Only somewhat important in a democracy;
 - D. Not important in a democracy;
 - E. Don't know / Refuse to answer.
 2. When dealing with convicted felons, which of the following should be the most important goal of the criminal justice system?
 - A. Punishment of the offender;
 - B. Rehabilitation of the offender;
 - C. Deterrence, or discouraging future offenders;
 - D. Removal of the offender from society;
 - E. Don't know / Refuse to answer.
 3. Would you agree or disagree with the following statement?: "Felons who serve their time should return to society as full citizens, with full rights and privileges."
 - A. Strongly agree;
 - B. Somewhat agree;
 - C. Somewhat disagree;
 - D. Strongly disagree;
 - E. Don't know / Refuse to answer.
 4. (If "disagree" in #3) Is this because . . .
 - A. Felons are not punished enough by the criminal justice system?
 - B. There are some rights that should be revoked permanently?
 - C. Those who commit felony offenses are not good citizens?
 - D. All of the above?
 - E. None of the above / Some other reason?
 - F. Don't know / Refuse to answer?
 5. With respect to convicted felons, do you think they have too many rights, too few rights, or about the correct amount of rights?
 - A. Too many;
 - B. Too few;
 - C. About the correct amount;
 - D. Don't know / Refuse to answer.
 6. Do you think the criminal justice system is . . .
 - A. Completely fair;
 - B. Generally fair;
 - C. Generally unfair;
 - D. Completely unfair;
 - E. Don't know / Refuse to answer.
 7. Some states either temporarily or permanently revoke a convicted felon's right to vote. Which of the following statements best represents your view on this matter?
 - A. Felons should never lose their right to vote;
 - B. Felons should lose their right to vote only while they are incarcerated;
 - C. Felons should lose their right to vote only while they are on parole or probation;
 - D. Felons should lose their right to vote only while they are incarcerated and on parole or probation;
 - E. Felons should lose their right to vote while they are incarcerated, on parole or probation, and the rest of their life;
 - F. Don't know / Refuse to answer.
 8. (If B—F for #7) Which of the following statements best explains your reasons for feeling this way?
 - A. Felons are immoral individuals;
 - B. Felons have proven that they should not be treated as citizens;
 - C. Felons cannot be trusted;
 - D. All of the above;
 - E. None of the above / Some other reason;
 - F. Don't know / Refuse to answer.
-

III. RESULTS

FIGURE 2
SURVEY RESULTS

1. In your opinion, is the right to vote . . .

	Frequency	Percent
1. THE most important right in a democracy;	233	46.3
2. One of the most important rights in a democracy;	236	46.9
3. Only somewhat important in a democracy;	25	5.0
4. Not important in a democracy;	8	1.6
5. Don't know / Refuse to answer.	1	.2
TOTAL	503	100.0

2. When dealing with convicted felons, which of the following should be the most important goals of the criminal justice system?

	Frequency	Percent
1. Punishment of the offender;	115	22.9
2. Rehabilitation of the offender;	155	30.8
3. Deterrence, or discouraging future offenders;	88	17.5
4. Removal of the offender from society;	113	22.5
5. Don't know / Refuse to answer.	32	6.4
TOTAL	503	100.0

3. Would you agree or disagree with the following statement?: "Felons who serve their time should return to society as full citizens, with full rights and privileges."

	Frequency	Percent
1. Strongly agree;	114	22.7
2. Somewhat agree;	139	27.6
3. Somewhat disagree;	105	20.9
4. Strongly disagree;	117	23.3
5. Don't know / Refuse to answer.	28	5.6
TOTAL	503	100.0

4. (If “somewhat” or “strongly” disagree for question #3) Is this because . . .

	Frequency	Percent	Valid Percent
1. Felons are not punished enough by the criminal justice system?	39	7.8	17.6
2. There are some rights that should be revoked permanently?	99	19.7	44.6
3. Those who commit felony offenses are not good citizens?	24	4.8	10.8
4. All of the above?	23	4.6	10.4
5. None of the above / Some other reason?	33	6.6	14.9
6. Don't know / Refuse to answer?	4	.8	1.8
TOTAL	222	44.1	100.0
Missing	281	55.9	
TOTAL	503	100.0	

5. With respect to convicted felons, do you think they have too many rights, too few rights, or about the correct amount of rights?

	Frequency	Percent
1. Too many;	227	45.1
2. Too few;	48	9.5
3. About the correct amount;	182	36.2
4. Don't know / Refuse to answer.	46	9.1
TOTAL	503	100.0

6. Do you think the criminal justice system is . . .

	Frequency	Percent
1. Completely fair;	3	.6
2. Generally fair;	350	69.6
3. Generally unfair;	121	24.1
4. Completely unfair;	24	4.8
5. Don't know / Refuse to answer.	5	1.0
TOTAL	503	100.0

7. Some states either temporarily or permanently revoke a convicted felon's right to vote. Which of the following statements best represents your view on this matter?

	Frequency	Percent
1. Felons should never lose their right to vote;	50	9.9
2. Felons should lose their right to vote only while they are incarcerated;	159	31.6
3. Felons should lose their right to vote only while they are on parole or probation;	25	5.0
4. Felons should lose their right to vote only while they are incarcerated, on parole, or probation;	177	35.2
5. Felons should lose their right to vote while they are incarcerated, on parole or probation, and the rest of their life;	80	15.9
6. Don't know / Refuse to answer.	12	2.4
TOTAL	503	100.0

8. (If answers #2-5 in question #7) Which of the following statements best explains your reasons for feeling this way?

	Frequency	Percent	Valid Percent
1. Felons are immoral individuals;	30	6.0	6.8
2. Felons have proven that they should not be treated as citizens;	144	28.6	32.7
3. Felons cannot be trusted;	89	17.7	20.2
4. All of the above;	30	6.0	6.8
5. None of the above / Some other reason;	137	27.2	31.1
6. Don't know / Refuse to answer.	11	2.2	2.5
TOTAL	441	87.7	100.0
Missing	62	12.3	
TOTAL	503	100.0	

TABLE 2.
SURVEY RESULTS BY SUBGROUP

	White	Black	Hisp	Male	Female	Dem	Rep	Indep	Grade School or Less	Some High School	High School Grad	Some College	College Grad	Post College
QUESTION 1: In your opinion, is the right to vote . . .														
Most important	186 (46.2)	15 (41.7)	10 (55.5)	112 (47.7)	121 (45.1)	87 (44.4)	76 (56.7)	47 (38.5)	2 (40)	13 (54)	61 (46.2)	54 (42.5)	62 (45.9)	36 (52.1)
One of the most important	193 (47.9)	18 (50.0)	7 (38.9)	103 (43.8)	133 (49.6)	93 (47.4)	52 (38.8)	66 (54)	2 (40)	7 (29.2)	60 (45.4)	62 (48.8)	69 (51.1)	30 (43.4)
Only somewhat important	20 (4.96)	1 (2.7)	1 (5.5)	17 (7.2)	8 (2.98)	11 (5.6)	5 (3.7)	5 (4.0)	0 (0.0)	2 (8.3)	8 (6.0)	8 (6.3)	4 (2.9)	3 (4.3)
Not important	4 (1.97)	1 (2.7)	0 (0.0)	3 (1.3)	5 (1.86)	4 (2.0)	1 (7)	4 (3.3)	1 (20)	2 (8.3)	3 (2.2)	3 (2.5)	0 (0.0)	0 (0.0)
Don't know / refuse	0 (0.0)	1 (2.7)	0 (0.0)	0 (0.0)	1 (3.7)	1 (5)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (7)	0 (0.0)	0 (0.0)
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	69
QUESTION 2: When dealing with convicted felons, which of the following should be the most important goals of the criminal justice system?														
Punishment	89 (22.1)	9 (25)	9 (50)	53 (22.5)	62 (23.1)	39 (19.9)	39 (29)	24 (19.6)	2 (40)	5 (20.8)	31 (23.5)	38 (29.9)	23 (17.3)	na
Rehabilitation	115 (28.5)	19 (52.7)	5 (27.7)	71 (30.2)	84 (31.3)	71 (36.2)	21 (15.7)	43 (35.2)	1 (20)	10 (41.6)	44 (33.3)	37 (29.1)	47 (35)	na
Deterrence	84 (20.8)	2 (5.5)	1 (5.5)	47 (20)	41 (15.3)	25 (12.7)	30 (22.3)	23 (18.9)	1 (20)	0 (0.0)	18 (13.6)	20 (15.7)	29 (21.5)	na
Removal from society	88 (21.8)	4 (11.1)	3 (16.6)	46 (19.5)	67 (25)	47 (24)	37 (27.6)	23 (18.9)	1 (20)	6 (25)	27 (20.5)	27 (21.3)	28 (20.7)	na
Don't know / refuse	27 (6.6)	2 (5.5)	0 (0.0)	18 (7.7)	14 (5.2)	14 (5.2)	7 (5.2)	9 (7.3)	0 (0.0)	3 (9.1)	12 (9.1)	5 (17)	8 (5.9)	na
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	na*
QUESTION 3: Would you agree with the following statement?: "Felons who serve their time should return to society as full citizens, with full rights and privileges."														
Strongly agree	76 (18.9)	20 (55.0)	7 (38.8)	64 (27.2)	49 (18.3)	49 (25.0)	20 (14.9)	32 (26.2)	2 (40)	8 (33.3)	29 (21.9)	25 (19.7)	34 (25.1)	14 (20.2)
Somewhat agree	113 (28.0)	9 (25.0)	2 (11.1)	69 (29.4)	71 (26.5)	51 (26.0)	35 (26.1)	40 (32.8)	2 (40)	3 (12.5)	30 (22.7)	42 (33.1)	35 (25.9)	25 (36.2)
Somewhat disagree	85 (21.1)	5 (13.8)	4 (22.2)	43 (18.3)	62 (23.1)	41 (20.9)	31 (23.1)	24 (19.7)	0 (0.0)	4 (16.7)	28 (21.2)	25 (19.7)	37 (27.4)	11 (15.9)
Strongly disagree	103 (25.5)	2 (5.50)	4 (22.2)	47 (20.0)	70 (26.1)	41 (20.9)	42 (26.1)	21 (17.2)	1 (20)	7 (29.2)	36 (27.2)	31 (24.4)	23 (17.0)	15 (21.7)
Don't know / refuse	26 (6.50)	0 (0.00)	1 (5.50)	12 (5.10)	16 (5.97)	14 (7.14)	6 (5.97)	5 (4.10)	0 (0.0)	2 (8.33)	9 (6.81)	4 (3.14)	6 (4.44)	4 (5.79)
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	69
QUESTION 4: If "somewhat" or "strongly disagree", is this because . . .														
Felons are not punished enough	36 (19.1)	1 (14.3)	1 (12.5)	10 (11.1)	28 (21.2)	9 (10.9)	20 (27.0)	9 (20.0)	0 (0.00)	1 (9.03)	13 (20.3)	13 (23.6)	8 (13.5)	5 (19.2)
Some rights should be perm.	82 (44.0)	3 (42.9)	5 (62.5)	37 (41.1)	62 (47.0)	38 (46.3)	29 (39.2)	21 (47.0)	0 (0.00)	6 (54.5)	26 (40.6)	26 (47.3)	28 (47.5)	11 (42.3)
Felons are not good citizens	20 (10.6)	1 (14.3)	0 (0.00)	15 (16.7)	10 (7.57)	7 (8.50)	7 (9.53)	8 (17.8)	0 (0.00)	1 (9.03)	6 (9.44)	3 (5.43)	5 (8.56)	7 (26.9)
All of the above	19 (10.1)	1 (14.3)	1 (12.5)	9 (10.0)	14 (10.6)	7 (8.50)	10 (13.5)	10 (22.2)	0 (0.00)	0 (0.00)	7 (10.9)	5 (9.01)	8 (13.6)	2 (7.77)
Some other reason	28 (14.9)	1 (14.3)	1 (12.5)	19 (21.1)	14 (10.6)	19 (23.2)	8 (10.8)	5 (11.1)	1 (100)	3 (27.3)	9 (14.1)	8 (14.5)	10 (16.9)	1 (3.81)
Don't know / refuse	3 (1.60)	0 (0.00)	0 (0.00)	0 (0.00)	4 (3.01)	2 (2.41)	0 (0.00)	1 (2.20)	0 (0.00)	0 (0.00)	3 (1.87)	1 (1.88)	0 (0.00)	0 (0.00)
TOTAL	188	7	8	90	132	82	74	45	1	11	64	55	59	26

TABLE 2 (CONTINUED)

	White	Black	Hisp	Male	Female	Dem	Rep	Indep	Grade School or Less	Some High School	High School Grad	Some College	College Grad	Post College
QUESTION 5: With respect to convicted felons, do you think they have too many rights, too few rights or about the correct amount of rights?														
Too many	190 (47.0)	11 (30.5)	5 (27.7)	102 (43.4)	125 (46.6)	73 (50.0)	79 (59.0)	51 (41.8)	3 (60.0)	9 (37.5)	62 (47.0)	63 (49.6)	53 (39.5)	27 (39.1)
Too few	29 (7.23)	8 (22.2)	5 (27.7)	91 (38.7)	23 (8.57)	24 (16.4)	5 (3.74)	14 (11.5)	0 (0.00)	3 (12.5)	18 (13.6)	7 (5.51)	13 (9.67)	7 (10.1)
About the correct amount	146 (36.2)	14 (38.8)	7 (38.9)	25 (10.6)	91 (34.0)	78 (53.4)	41 (31.0)	44 (36.0)	1 (20.0)	5 (20.8)	45 (34.1)	44 (34.6)	58 (43.0)	28 (40.5)
Don't know / refuse	38 (9.43)	3 (8.34)	1 (5.56)	17 (7.29)	29 (14.4)	21 (14.4)	9 (6.77)	13 (10.7)	1 (20.00)	7 (29.1)	7 (5.39)	13 (11.0)	11 (8.15)	7 (10.1)
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	69
QUESTION 6: Do you think the criminal justice system is . . .														
Completely fair	16 (3.97)	0 (0.00)	0 (0.00)	2 (0.85)	1 (0.37)	2 (1.02)	1 (0.7)	1 (0.8)	1 (20.0)	0 (0.00)	3 (2.3)	0 (0.00)	0 (0.00)	0 (0.00)
Generally fair	286 (70.9)	19 (52.7)	10 (55.6)	159 (67.6)	190 (70.8)	137 (69.9)	104 (77.6)	80 (65.6)	3 (60.0)	13 (54.2)	88 (66.7)	83 (65.4)	98 (73.0)	78 (84.0)
Generally unfair	84 (20.8)	14 (38.9)	7 (38.9)	56 (23.8)	65 (24.2)	47 (24.0)	24 (17.9)	33 (27.0)	1 (20.0)	7 (29.2)	33 (25.0)	37 (29.1)	30 (22.2)	11 (15.9)
Completely unfair	13 (3.24)	3 (8.32)	1 (5.67)	13 (5.54)	12 (4.57)	8 (4.1)	4 (3.00)	7 (5.7)	0 (0.00)	3 (12.5)	7 (5.3)	5 (4.0)	6 (4.4)	0 (0.00)
Don't know / refuse	4 (0.99)	0 (0.00)	0 (0.00)	5 (2.11)	0 (0.00)	2 (1.0)	1 (0.7)	1 (0.8)	0 (0.00)	1 (4.2)	1 (7.5)	2 (1.6)	1 (0.74)	0 (0.00)
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	69
QUESTION 7: Some states either temporarily or permanently revoke a convicted felon's right to vote. Which of the following statements best represents your view on this matter?														
Never lose the right to vote	41 (10.2)	4 (11.1)	1 (5.6)	24 (10.2)	24 (8.9)	23 (11.7)	7 (5.2)	15 (12.3)	0 (0.00)	4 (16.7)	14 (10.6)	8 (6.3)	16 (11.9)	6 (8.7)
Lose the right only while incarcerated	116 (28.8)	17 (47.2)	6 (33.3)	78 (33.2)	81 (30.2)	66 (33.7)	36 (26.9)	40 (32.8)	3 (60.0)	11 (45.8)	41 (31.1)	44 (34.6)	37 (27.4)	22 (32.0)
Only on parole or probation	24 (5.9)	0 (0.00)	1 (5.6)	11 (4.7)	13 (4.9)	16 (8.2)	7 (5.2)	4 (3.27)	0 (0.00)	0 (0.00)	5 (4.0)	9 (7.1)	8 (5.9)	2 (2.9)
Incarceration + parole/probation	146 (36.2)	14 (38.9)	6 (33.3)	78 (33.2)	99 (36.9)	64 (33.0)	51 (38.1)	50 (40.9)	2 (40.0)	3 (12.5)	44 (34.6)	47 (37.0)	50 (37.0)	27 (39.1)
Incarceration + parole/probation + life	66 (16.4)	0 (0.00)	4 (22.2)	40 (17.0)	43 (16.0)	22 (11.2)	31 (23.1)	9 (7.38)	0 (0.00)	3 (12.5)	24 (13.4)	17 (13.3)	22 (16.3)	10 (14.5)
Don't know / refuse	10 (2.5)	1 (2.8)	0 (0.00)	4 (1.7)	8 (3.0)	5 (2.6)	2 (1.5)	4 (3.28)	0 (0.00)	3 (12.5)	4 (1.6)	2 (1.6)	2 (1.5)	2 (2.9)
TOTAL	403	36	18	235	268	196	134	122	5	24	132	127	135	69
QUESTION 8: (For those indicating support for temporary or permanent disenfranchisement above) Which of the following statements best explains your reasons for feeling this way?														
Felons are immoral individuals	23 (6.6)	2 (6.5)	4 (23.5)	19 (9.2)	11 (4.7)	12 (7.14)	1 (0.8)	10 (9.62)	0 (0.00)	1 (5.9)	14 (12.3)	8 (6.8)	5 (4.3)	1 (1.6)
Felons should not be treated as citizens	119 (34.0)	6 (19.4)	5 (29.4)	67 (32.4)	77 (33.0)	47 (27.9)	41 (32.8)	45 (43.3)	0 (0.00)	5 (29.4)	31 (27.2)	43 (36.8)	36 (30.7)	26 (42.6)

TABLE 2 (CONTINUED)

	White	Black	Hisp	Male	Female	Dem	Rep	Indep	Grade School or Less	Some High School	High School Grad	Some College	College Grad	Post College
Felons cannot be trusted	71 (20.2)	4 (12.9)	5 (29.4)	40 (20.9)	49 (20.9)	37 (22.0)	29 (23.2)	21 (20.2)	2 (40.0)	5 (29.4)	30 (26.3)	23 (19.6)	17 (14.5)	3 (4.9)
All of the above	26 (7.4)	0 (0.00)	1 (5.9)	11 (8.2)	19 (8.2)	10 (5.95)	14 (11.2)	0 (0.00)	1 (20.0)	1 (5.9)	9 (7.9)	6 (5.1)	9 (7.7)	13 (21.3)
None of the above / some other reason	102 (29.1)	18 (58.0)	2 (11.8)	67 (29.9)	70 (29.9)	56 (33.3)	36 (28.8)	31 (29.8)	1 (20.0)	3 (17.6)	27 (23.7)	34 (29.1)	48 (41.0)	18 (29.5)
Don't know / refuse	10 (2.8)	1 (3.2)	0 (0.00)	3 (3.4)	8 (3.4)	6 (3.57)	4 (3.2)	1 (0.96)	1 (20.0)	2 (11.8)	3 (2.6)	3 (2.6)	2 (1.7)	0 (0.00)
TOTAL	351	31	17	207	234	168	125	104	5	17	114	117	117	61

* Because of a reporting error, these data are unavailable.

IV. SIGNIFICANT FINDINGS

Of those surveyed, 81.7% feel that, *at some point*, the right to vote should be restored to convicted felons.⁷⁴ We found no consensus regarding the exact time or phase within the sentence that the franchise should be returned, but by totaling up those who felt that felons should never lose the right to vote (9.9%), those who felt felons should lose the right to vote only while incarcerated (31.6%), those who felt felons should lose the right to vote only while on parole or probation (5.0%), and those who felt felons should lose the right to vote only while incarcerated, or on parole or probation (35.2%), we are able to conclude that 81.7% of those surveyed rejected the policy of *permanent* disenfranchisement for convicted felons.⁷⁵

74. This conclusion is consistent with our results from Question 1, regarding the importance of the right to vote in a democracy. Chi-square analysis shows that race, party affiliation, and education differences are not statistically significant. It suggests that American people do have a consensus across racial, gender, party, and education subgroups that the right to vote is the "most important" or "one of the most important" rights in a democracy.

75. We did notice intriguing discrepancies within the various subgroups, regarding the phase at which the franchise should be returned. The difference in response among different party affiliations is significant at .05 level. *See* Tbl. 3 (summarizing the difference findings for the subgroups). Democrats seem to be evenly divided between those who advocate "lose the right only while incarcerated" (33.7%) and those who agree with "incarceration and parole or probation" (33%). Republicans and Independents, however, are more inclined to support "incarceration and parole and probation" (Republicans at 38.1% and Independents at 40.9%). Republicans demonstrated the highest percentage of support for lifetime disenfranchisement of any single subgroup (23.1%), a figure made even more interesting when contrasted against the responses of Republicans, expressed in Question 1, that the right to vote is "the *most* important right in a democracy" (56.7%—a figure that is *also* the highest percentage of any subgroup). Thus, Republicans as a group, more than any other, felt that the right to vote is the most important right, but they are also the group that is most inclined to take this right away.

The differences in response among people of different racial groups, between Males and Females, and among people of different educational levels are not significant at .05 level. But interestingly, the modal (and near majority) response for African-Americans, for example, was that felons should lose the right to vote "only while incarcerated" (47.2%). *Not a single one of the thirty-six African-Americans surveyed supported lifetime disenfranchisement.* The modal response for Whites on this issue was "lose the right while incarcerated, on parole, or probation" (33.3%). Finally, it is worth noting that the modal response for *every* subgroup was either "only while incarcerated" (African-Americans 47.2%, Democrats 33.7%, Grade School or Less 60%, and Some High School 45.8%) or "while incarcerated and on parole or probation" (Whites 36.2%, Females 36.9%, Republicans 38.1%, Independents 40.9%, High School Graduates 34.6%, Some College 37%, College Graduates 37%, and Post College 39.1%), with two "ties" between those two responses (Hispanics 33.3% and Males 33.2%).

When those that supported temporary or permanent disenfranchisement were asked *why* they supported this policy, the valid modal response was that “felons have proven that they should not be treated as citizens” (32.7%). Importantly, however, the second largest single valid response was “None of the above / Some other reason” (31.1%), suggesting that we perhaps missed a potential (and popular) option or that a large segment of the public was unable to articulate its reasons for thinking this way.⁷⁶

Despite the rhetoric we occasionally hear from elected officials about criminals being “coddled,” the American public is, in fact, evenly split on the issue of rights for convicted felons. While 45.1% of our respondents did say that convicted felons have “too many” rights, slightly more of those surveyed (45.7%) felt that these individuals have either “too few” (9.5%) or “about the correct amount” (36.2%) of rights.⁷⁷

76. The difference in responses to this question among people of different racial groups, party affiliations, and educational levels is significant at .05 level. For Whites, the most popular answer was “felons should not be treated as citizens” (34%); African-Americans, however, were least likely to offer this response (19.4%). We discount the negligible percentage of those with some Grade School or Less because this group included only five respondents. Hispanics seem quite divided on this issue (“felons are immoral individuals” 23.5%, “felons should not be trusted as citizens” 29.4%, “felons cannot be trusted” 29.4%). Political Independents were most likely to say that felons had shown they could not be treated as citizens (43.3%). This was the most popular answer for Republicans as well (32.8%), though, for the Democrats, the most popular answer was “None of the above / Some other reason” (33.3%), a response which was the *second* most popular answer for both Republicans (28.8%) and Independents (29.8%).

Among different educational groups, the most popular answer, with the exception of those with “Grade School or Less” and those who are “College Graduates,” was that “felons should not be treated as citizens” (“Some High School” 29.4%, “High School Graduate” 27.2%, “Some College” 36.8%, “Post College” 42.6%). For College Graduates, the modal answer was “None of the above/None other reason” (41%). People with less than some college education seem to be evenly divided between “felons should not be treated as citizens” and “felons can not be trusted” (“Some High School” 29.4% and 29.4%, respectively, “High School Graduate” 27.2% and 26.3%, respectively). As the education level increases, there are more people who respond with “None of the above / Some other reason,” while the percentage choosing “felons can not be trusted” tends to drop.

77. Consistent with the generally greater “law and order” orientation of the Republican Party, it is not surprising that Republicans were most likely to respond that convicted felons have “too many rights” (59%) (60% of those with some grade school or less offered this response, but again, with only five respondents, we do not make as much of this figure). Males and Females offered similar degrees of support for “too many rights” (43.4% and 46%, respectively), but interestingly, Males were considerably more likely to answer “too few rights” on this question (38.7%), versus (8.57%) for Females. As this would suggest then, Females offered a much greater degree of support for the response “about the correct amount of rights” (34.0%) than Males (10.6%). No subgroup offered “too few rights” as its modal response. “Too

We found more dissensus in the responses given to our question pertaining to the general restoration of rights and privileges to felons who have completed their sentences. Specifically, we found that slightly more than half of those surveyed (50.3%) either "Strongly" or "Somewhat agreed" with the statement "Felons who serve their time should return to society as full citizens, with full rights and privileges," while (44.2%) either "Somewhat" or "Strongly disagreed" with this statement.⁷⁸

When we asked those who disagreed, either "Somewhat" or "Strongly," *why* they disagreed, we found that the modal rationale, *overall* (44.6%) and for *each* of the fourteen subgroups (ranging from a high of 62.5% for Hispanics, to a low of 39.2% for Republicans)⁷⁹ was that "there are some rights that should be revoked per-

many rights" was the mode for the following groups: Whites, Males, Females, Republicans, Independents, Grade School or Less, Some High School, High School Graduates, and Some College, while "about the correct amount of rights" was the modal answer for the remaining groups: African-Americans, Hispanics, Democrats, College Graduates, and Post College.

78. The difference among Whites, African-Americans, and Hispanics is statistically significant. See Tbl. 3. Whites seem to be evenly divided between those that "strongly agree" (18.9%), "somewhat agree" (28.8%), "somewhat disagree" (21.1%), and "strongly disagree" (25.5%). By contrast, African-Americans overwhelmingly expressed the highest rate of "strong agreement" with this statement (55.0%), followed by Hispanics (38.8%). Another 25% of African-Americans "somewhat agree" with this statement; only 5.5% "strongly disagree." The percentage of Hispanics who offered "strongly disagree" as a response is 22.2%, a percentage much higher than African-Americans and closer to the percentage of Whites who give such a response. This suggests that most African-Americans (75%) believe that ex-felons should be returned as full citizens while Whites and Hispanics are evenly divided between those who agree ("strongly" or "somewhat") and those who disagree ("strongly" or "somewhat"). The contrast for Whites is 46.9% versus 46.6% and for Hispanics is 49.9% versus 44.4%. There is no significant difference in the responses between Males and Females, those of different party affiliations, or those at different educational levels at .05 level. Interestingly, however, and consistent with their responses to other questions, Republicans expressed the lowest rate of "strong agreement" (14.9%).

79. The results show there is no significant difference in response to this question among different racial groups, party affiliations, or educational levels at .05 level. The most popular answer was "some rights should be permanently revoked" (Whites 44%, African-Americans 42.9%, Hispanics 62.5%, Democrats 46.3%, Republicans 39.2%, Independents 47%, Some High School 54.5%, High School Graduates 40.6%, Some College 47.3%, College Graduates 47.5%, Post College 42.3%). One point worth noting is that Republicans expressed the lowest percentage of support for the permanent revocation-of-rights-reasoning, because, as a group, they expressed the *highest* degree of support for the position that "felons are not punished enough by the criminal justice system" (27.0%). There is a significant difference between Male and Female responses regarding this question at .05 level. The most popular response, however, for both of these two subgroups is "some rights should be permanently revoked" (Males 41.1%, Females 47%). The difference probably lies in the second popular response: "some other reason" for Males (21.1%) and "felons are not punished enough" for Females (21.2%).

manently.” Interestingly, on this question, respondents did *not* base their “disagreement” with the above statement on the fact that “felons are not good citizens,” a reason, again, which *was* the most popular response offered by those who supported temporarily or permanently disenfranchising felons (Question 8).

Of those surveyed, 70.2% feel the criminal justice system is “completely” or “generally fair.” But, when we look at the numbers for specific subgroups, we see some striking contrasts. Most subgroups feel that the system is “generally fair” and express this in the 60-70% range. As we might expect, however, African-Americans (52.7%), Hispanics (55.6%), and those with some high school (54.2%) were less inclined to find the system “generally fair.” Conversely, those with the greatest amount of education (post college) were most likely to find the system “generally fair” (84.0%).⁸⁰

Finally, when asked what the goal of the criminal justice should be, the overall modal response was “rehabilitation” (30.8%).⁸¹ “Rehabilitation,” as a response, ranged from a high of 52.7% for African-Americans, to a low of 15.7% for Republicans and was the modal response for Whites, African-Americans, Males, Females, Democrats, Independents, those with some high school, high school graduates, college graduates, and those with post college education, while “punishment” was the most popular response for

80. The difference between people of various racial groups, between Males and Females, and between persons of different party affiliations is not significant at .05 level. The most popular answer for Whites (70.9%), African-Americans (52.7%), and Hispanics (55.6%) is “generally fair” and the second most popular answer is “generally unfair” (Whites 20.8%, African Americans 38.9%, and Hispanics 38.9%). For both Males and Females, the most popular answer is “generally fair” (Males 67.6%, Females 70.8%) and the second most popular answer is “generally unfair” (Males 23.8%, Females 24.2%). For Democrats, Republicans, and Independents alike, the most popular answer is “generally fair” (Democrats 69.9%, Republicans 77.6%, Independents 65.5%) and the second most popular answer is “generally unfair” (Democrats 24%, Republicans 17.9%, Independents 27%). The difference in people’s feelings about the fairness of the criminal justice system, across different educational levels, is significant at .05 level. The most popular answer for all groups is “generally fair” (Grade School 60%, Some High School 54.2%, High School Graduates 66.7%, Some College 65.4%, College Graduates 73%, Post College 84%) and the second most popular answer is “generally unfair” (Grade School 20%, Some High School 29.2%, High School Graduates 25%, Some College 29.1%, College Graduates 22.2%, and Post College 15.9%). It is worth noting that those who are College Graduates and those who have post-college education are more inclined to think the system is “generally fair” (73% and 84%, respectively).

81. Another recent survey found that “four in ten [Americans] believe the main purpose of prison is rehabilitation, rather than deterrence, punishment, or the protection of society.” Am. Civil Liberties Union, *Surprising Shift: New ACLU Poll Finds Public Dissatisfied with Lock-Em-Up Approach*, Feb. 25, 2002, available at <http://www.aclu.org/prisons/prisons.cfm?ID=9439&C=26> (last visited July 15, 2003).

TABLE 3
SUMMARY OF THE DIFFERENCE FINDINGS

Questions	Subgroups			
	Race	Gender	Party	Education
Q1: The Right to Vote	*	*	*	*
Q2: The Goal of the Criminal Justice System	S	*	S	*
Q3: Felons Returning as Full Citizens	S	*	*	*
Q4: Reasons for Disagreement	*	S	*	*
Q5: Rights of Convicted Felons	S	S	S	S
Q6: The Fairness of the Criminal Justice System	*	*	*	S
Q7: Revocation of Voting Rights/Degree of Disenfranchisement	*	*	S	*
Q8: Reasons for Disenfranchisement	S	*	S	S
S: The difference within the subgroup is significant at .05 level.				
*: The difference within the subgroup is not significant at .05 level.				

Hispanics (at a high of 50%), Republicans, those with grade school or less, and those with some college education.⁸²

V. DISCUSSION

It would be convenient if our findings demonstrated clear public attitudes toward felony disenfranchisement. Perhaps because this is an exploratory study—but more likely because of the underlying

82. The differences within subgroups are worth noting. Chi-square analysis shows that there is significant difference in Whites, African-Americans, and Hispanics' understanding of the goals of the criminal justice system. While the most popular answer for Whites (28.5%) and African-Americans (52.7%) is "rehabilitation," one half of Hispanics (50%) think "punishment" is the goal. In addition, Whites are the racial subgroup most divided on this issue: while 28.5% chose "rehabilitation," 22.1% offered "punishment" as the goal; 20.8% stated that "deterrence" was the goal; and 21.8% thought that "removal from society" was the purpose of the criminal justice system. African-Americans and Hispanics, however, have more consensus on this matter. For African-Americans, the percentage answering "rehabilitation," "punishment," "removal from society," and "deterrence" was 52.7%, 25%, 11.1%, and 5.5%, respectively. For Hispanics, the percentage answering "rehabilitation," "punishment," "removal from society," and "deterrence" was 27.7%, 50%, 16.6%, and 5.5%, respectively. There is also a significant difference regarding the goal of the criminal justice system among the various party affiliations. For Democrats and Independents, the most popular answer (36.2% for Democrats, 35.2% for Independents) was "rehabilitation"; but for the Republicans, the most popular answer was "punishment" (29%). The second most popular answer was the same for Democrats and Republicans: 24% of the Democrats and 27.6% of the Republicans agree that "removal from the society" was the goal. Independents, however, with the exception of those answering "rehabilitation" (35.2%), seem to be quite evenly divided among "punishment" (19.6%), "deterrence" (18.9%), and "removal from the society" (18.9%). There was no significant difference regarding this question between Males and Females and among different educational levels at .05 level.

complexity in public attitudes—we find no simple picture. These findings both clarify and complicate our understanding of public attitudes toward the disenfranchisement of felons, the criminal justice system, and the general place of felons in our society. Specifically, we offer the following observations for discussion.

We believe these data demonstrate that the American public does *not* support the *permanent* disenfranchisement of convicted felons. Again, 81.7% of those surveyed support the return of the franchise *at some point* during the serving of the sentence; and while we discovered no consensus regarding the exact point at which the right to vote should be returned, we found that only 15.9% of the public supports lifetime disenfranchisement. Conversely, however, we found even less support (9.9%) for policies that *never* restricted or rescinded felons' voting rights. Less than one-tenth of our respondents, in other words, felt that felons should retain their right to vote during all phases of their sentence (incarceration, probation, parole). Thus, these data suggest that the majority of Americans are somewhere in the middle. Relatively few favor a policy that *never* punishes felons with a temporary deprivation of their right to vote, and only slightly more favor a policy that *permanently* punishes felons with a deprivation of their right to vote. Public opinion, therefore, is solidly consistent with the laws of the thirty-five states (plus the District of Columbia) that restrict the right to vote during incarceration and/or parole or probation, while public attitudes are, by contrast, overwhelmingly opposed to the policies of the two states that never disenfranchise, and the thirteen that permanently disenfranchise convicted felons.⁸³

As public awareness of these laws increases—especially owing to the impact of the Florida law on the election of 2000 and the increase in scholarly attention—we expect our findings to encourage even more rigorous scrutiny of state legislation that permanently revokes the voting rights of convicted felons. As the effects of disenfranchisement policies receive greater publicity and as the laws are reevaluated, however, we expect the debate over these issues to become increasingly *partisan*, especially as Democrats are ex-

83. Because our data is derived from a national survey, we are unable to address the degree of support for specific policies within particular states. That is, while the American public, generally, is overwhelmingly opposed to lifetime disenfranchisement, our data cannot answer, for example, whether Alabamans or Floridians support this policy. Likewise, we are unable to determine whether the residents of Vermont and Maine support the policy in their respective states that never restricts felons' voting rights.

pected to be the beneficiaries of such an extension of the franchise. Because we have shown that a supermajority of the American public is opposed to this form of permanent political “banishment,” we expect our findings to make an important contribution to the debates, at the state and federal level, over these policies in the future. Put simply, we believe these data indicate that the American people accept the idea of losing the right to vote while behind “bars” (in a general sense), but overwhelmingly reject the practice of permanently “barring” felons from the vote.

One of the more striking aspects of our Study is the significance of race and party affiliation in the respondents’ answers to our questions. Most remarkable, we believe, was the difference in responses between Whites, Hispanics, and African-Americans regarding the purpose of the criminal justice system, the appropriate treatment for felons who have returned to society, and the degree and duration of disenfranchisement for those convicted of felony offenses. Recall that not one of the thirty-six African-American respondents in our study supported lifetime disenfranchisement, a finding that is consistent with African-American respondents’ more general inclinations toward “rehabilitation” as the goal of the criminal justice system (52.7%—more than twice the percentage for whites or Hispanics), and their disposition toward returning ex-felons to society “with full rights and privileges” (55%). When we consider the fact that African-Americans are more likely than whites to think the criminal justice system is “generally unfair” (38.9%), we see evidence that the racist origins and intentions of many of these disenfranchisement laws have translated into direct and disproportionate impact in terms of subgroups’ attitudes.

In terms of the influence of political party affiliation, and with an eye to the future of public policy within the states that disenfranchise ex-felons, we feel it is important to note the significant differences between Democrats’ and Republicans’ views on the goal of the criminal justice system, the degree of rights for convicted felons, the duration of the disenfranchisement, and the reasons supporting this revocation of voting rights. To state the policy implications succinctly, we infer from these data that state with Republican-dominated legislatures will be less likely to liberalize existing disenfranchisement policies. Recall that Republican respondents in our study were more likely to feel that “punishment” (29%) and the “removal of the offender from society” (27.6%) were the goals of the criminal justice system; they were most likely to feel that convicted felons have “too many rights”

(59%); they were the political affiliation most likely to support lifetime disenfranchisement (23.1); and, of those that supported disenfranchisement, they were slightly more likely than Democrats to reason that “felons should not be treated as citizens” (32.8%). While Democratic respondents offered similar sentiments in some cases, it is significant to note that members of this party were more inclined toward “rehabilitation” (36.2%), more likely to feel that convicted felons have “too few” rights (16.4%), and less supportive of lifetime disenfranchisement (11.2%). Democrats, we conclude—while perhaps not as energetically supportive of ex-felons’ voting rights as advocates for change would hope for—do seem more receptive to liberalizing state disenfranchisement laws than Republicans.⁸⁴

What complicates the conclusions arrived at in this discussion is the fact that we found considerable dissensus regarding the restoration of full rights, privileges, and credentials of citizenship for felons, *in general*.⁸⁵ That is, we found the public to be nearly evenly divided on the notion that felons who have served their time “should return to society as full citizens, with full rights and privileges.” Recall that 50.3% of those surveyed either “somewhat” or “strongly agreed” with this statement, while 44.2% of those surveyed either “somewhat” or “strongly disagreed.” We expect that this can be explained, to some extent, by the fact that felons are, by definition, a class of individuals that invite closer public scrutiny, suspicion, and hostility—a class that is already subject to a variety legal restrictions on their activities⁸⁶—but we feel it is interesting,

84. We realize that Democratic legislators do not necessarily step in tune with our Democratic survey respondents and that they could be motivated by different concerns and interests. Our Study, for example, addressed citizens’ normative inclinations—focusing on their principled views and values. But one might expect Democratic politicians to be much more interested in liberalizing state disenfranchisement policies for one simple, and universal, reason: it is likely to increase their power. In an unpublished study, Manza and Uggen projected that (for presidential elections, at least), 70-90% of ex-felons would likely vote Democratic. Chambers, *supra* note 3, at 3.

85. In this sense then, our findings run counter to those of Prothro and Grigg. See Prothro & Grigg, *supra* note 66, at 291-93. While the parallel is not perfect—their survey looked at public attitudes toward “rights” (for all) in general and in more specific examples and our study dealt with public attitudes toward specific and general “rights” for one particular category of people—we find it worth noting that we saw less public support for felons’ rights in the abstract and increased support for the specific right to vote.

86. Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL’Y REV. 153, 155-58 (1999). Demleitner offers several examples of “collateral sentencing consequences,” including, in some cases, “the right to run for or hold office, rejection from jury service,

given our other findings, that there is this considerable reluctance to re-admit felons to society as “full citizens.”

Along these lines, Professor Demleitner argued that, because of “collateral sentencing consequences” many ex-offenders in the United States are essentially “internally exiled.”⁸⁷ We believe our study of public attitudes regarding disenfranchisement policies, felons’ rights, generally, and the nature and purpose of the criminal justice system offers evidence to suggest that Demleitner’s concerns are, in some respects, warranted. That is, while the public generally supports the return of the formal political right of the franchise, we also sense considerable disagreement, overall (but especially within subgroups: African-Americans versus Republicans, for example), regarding the appropriate legal and political status of ex-offenders in society. What this suggests to us is that while felons may not be “exiled” in a formal sense, they are also viewed, even after paying their “debt to society” and having voting rights restored, as “second class” citizens, and thus, are not necessarily welcomed back into the political community.

What we see in this sense then is almost a “public sentence” that is tacked onto felons’ formal sentences, situating them in a kind of intermediate socio-political space, somewhere between political banishment or “civil death” (the denial of voting rights) and genuine inclusion (consensus regarding the fitness and quality of members of the political community).⁸⁸ This public sentence suggests that felons are “in”—in the contractarian sense that they have been reseated at the table—but it also underscores a deeper tension with civic republicanism, in that their tablemates remain suspicious and are unsure exactly how to address them. In sum, we suggest that what this uncertainty might represent more than anything is the janus-faced nature of public attitudes regarding the treatment and place of felons within the criminal justice system and within our society, generally.⁸⁹

prohibition on certain federal benefits, and the ban on select professional licenses.” *Id.* at 154.

87. *Id.* at 153.

88. For a more specific application of this argument, consider the fate of sex offenders who return to their communities after the completion of their sentences. While the offender may have regained all of her legal rights, she may still be subject to a series of suspicions, biases, and rules that prevent or obstruct the resumption of the genuine experience of citizenship within the community. *Id.* at 158-60.

89. Consider, for example, that while the model response regarding the purpose of the criminal justice system was “rehabilitation” (overall and for ten of our subgroups), our Study also tapped into significant degrees of resistance to the idea of embracing felons as full citizens. Consider, as well, the fact that roughly half of those surveyed

VI. FUTURE RESEARCH

A future project based on this research involves a more detailed assessment of the political awareness and culture of the various states that still maintain laws rescinding ex-felons' voting rights. We hope to conduct surveys that consider the degree of public support within particular states, for felony disenfranchisement legislation, and that assess this level of support in light of the political culture, history, and tendencies of the various states. Put differently, do public attitudes within states correlate with the state's laws and policies? Is the public even *aware* of these practices? Moreover, does the degree of support cohere with other political practices or criminal justice policies within the states?

More specifically, and to recall our most recent electoral controversy, are Democrats in Florida aware of the vote-"dilution" caused by this law? Do the citizens of Alabama, Iowa, or Nevada know of and support their states' lifetime disenfranchisement policies? Is there a correlation between states that have more restrictive policies of this sort and a "tough on crime" political culture? For example, do states that maintain more restrictive criminal sentencing policies, drug laws, or higher per capita law enforcement budgets, for example, tend to disenfranchise ex-felons to a greater degree? Is there a correlation between disenfranchisement policies and such variables as state crime rates, "varieties" of police behavior,⁹⁰ or support for community policing? Most of twelve states that maintain categorical or qualified lifetime disenfranchisement for some ex-felons would typically be considered "conservative" or "moderate" in their political culture and traditions,⁹¹ yet there are plenty of "conservative" states that restrict voting rights only while felons are incarcerated (i.e., Idaho, Indiana, Kansas, Utah). What is the relationship between a state's political attitude (on the "liberal" to "conservative" spectrum) and its disenfranchisement laws? Can we locate any discernible pattern? We expect that a more focused and localized study of public attitudes and the political culture within these states will address these questions and concerns.

felt that felons had too many rights, while nearly half felt they had too few or about the right amount.

90. See generally JAMES Q. WILSON, *VARIETIES OF POLICE BEHAVIOR* (1968).

91. See Tbl. 1.

CONCLUSION

While democratic values, elections and participation, and the sources and significance of crime are topics of frequent study, until recently felony disenfranchisement legislation has slipped under the radar of scholars and policy advocates. What we have done here is to complement, with the first data of its kind, the efforts of activists, lawyers, and scholars who are involved in studying the impact of these laws. As indicated before, our inquiry was initially driven by basic curiosity: How prevalent are these laws?; What is the typical justification for them?; What are their origins?; and What is their impact? What we did not discover in our review of the existing literature was any data that measured public support for the disenfranchisement of felons; in short, we located a “gap” in the literature that called for more study. With this survey of 503 Americans, we have attempted to fill that gap and invite more discussion and scrutiny of this important topic.